

**UNITED STATES DEPARTMENT OF AGRICULTURE**

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**OFFICE OF INSPECTOR GENERAL**

TESTIMONY OF ROGER C. VIADERO  
INSPECTOR GENERAL  
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U.S. DEPARTMENT OF AGRICULTURE

Before the

UNITED STATES SENATE  
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

on the

DEPARTMENT'S PROCESSING OF CIVIL RIGHTS COMPLAINTS

September 12, 2000



**TESTIMONY OF  
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SEPTEMBER 12, 2000**

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I appreciate the opportunity to be here today to testify about our work on the Department's processing of complaints of discrimination. I will give an overview of the work we have done to monitor the integrity of this process, and I will summarize the major recommendations we have made to help improve the efficiency of the process.

With me today is James R. Ebbitt, Assistant Inspector General for Audit.

Over the past 3½ years, the Office of Inspector General has performed eight reviews of the Department's processing of civil rights complaints, all at the direction of the Secretary of Agriculture. Our reviews were completed over 7 phases and resulted in 8 reports and 2 internal memoranda, all of which contained a total of 119 recommendations. Thirteen of these recommendations were directed to the Farm Service Agency, and 12 involved some action by the Secretary. The rest were directed to the Department's Office of Civil Rights.

Our most recent reviews, which constituted Phase VII of our work, resulted in two reports issued simultaneously in March of this year. Both concerned the Office of Civil Rights. One reported on the Office's processing of complaints of discrimination in program benefits, and the other, on its processing of complaints of discrimination in

employment. The story these reports tell is one of a staff that is demoralized and inefficient and of a management that never got a firm hold of a system it inherited but that simultaneously resisted recommendations for improvement. For the Office of Civil Rights, this has been a continuing story throughout all seven phases of our work. Complaints were not adequately tracked, casefiles were poorly maintained, and managers were not held accountable for deadline overruns. Open cases we reviewed dated back several years. At the end of our Phase VII review, we concluded that complainants were not well served by the Department's complaints processing system, and we questioned whether complaints of discrimination, both program and employment, would receive due care.

Many of the problems we noted at the Office of Civil Rights during our most recent efforts were evident during our first review, completed in February 1997. At that time, before the Office of Civil Rights had been created, the Secretary had raised concerns about the integrity of the Department's process for resolving discrimination complaints in farm programs. We found that the complaints system was in disarray. Complaints were backlogged within the Department and their status could not be determined. The administrative arm of the Department that processed complaints at that time did not have a usable filing system or a reliable data base, and it did not have controls in place to monitor and track complaints. It lacked current regulations and formal procedures for its operations, and it accomplished little. There was no effective leadership and no accountability.

While our audit was in progress, we notified the Secretary through an internal memorandum that the Farm Service Agency was continuing to foreclose on minority farmers. The Secretary had suspended such foreclosures until a determination of discrimination could be made, but the Farm Service Agency allowed the foreclosures to proceed after the State executive director certified there was no evidence of discrimination. The Secretary acted immediately to institute an independent review of the foreclosures.

Because the focus of our review during this first phase was the integrity of the farm program complaints process, and because the Farm Service Agency was administering its own complaints resolution system, our two foremost recommendations to the Secretary were (1) to reevaluate all complaints that the Farm Service Agency had closed without concurrence from any other Department authority, and (2) to centralize control over the complaints process so that no one agency was allowed to resolve complaints against itself. We also recommended that an ad hoc committee be convened to resolve the backlog of complaints as expeditiously as possible.

As a result of these recommendations, the Office of Civil Rights, created in May 1997, took control of the Farm Service Agency's program complaint system. However, because of the poor filing and tracking systems being used, the Office of Civil Rights had difficulty locating all Farm Service Agency cases that had been closed (and was only able to complete this task within the last 6 months). Furthermore, the ad hoc team that had been convened to clear the backlog of cases found the casefiles too disorganized to

facilitate resolution. The team's recommendations for resolution were rejected by the director of the Office of Civil Rights because the complaints were never properly investigated. The team disbanded, and the backlog of unresolved complaints grew from 530 to 984 by September 1997.

It should be noted that the backlog of complaints remained a matter of concern throughout the seven phases of our review. By the end of 1997 the volume of backlog peaked at 1,088 cases. This number came to be known as the "original" backlog, largely because the Office of Civil Rights defined the backlog as cases filed prior to November 1, 1997. Such a definition limited the number of old cases that had not been resolved, but it made no allowances for new cases that would exceed the Department's 180-day deadline for case resolution. By March of this year, almost exactly 3 years after the original backlog came to light, the Office of Civil Rights had reduced that backlog to 35 cases, but simultaneously faced a "new" backlog of 454 cases that had been filed after November 1, 1997, and exceeded or were close to exceeding the 180-day deadline.

### **Phases II and III: On the Question of Equitable Treatment in Farm Programs**

The Secretary's request that led to our Phase I review included questions about minority participation in the Department's farm loan programs. Specifically, the Secretary wanted to know if minority farmers received a proportionate share of farm loans and if the Farm Service Agency processed minority and nonminority applications in the same manner. These questions formed the basis of our Phase II and Phase III reviews, issued in

September 1997. We did not find evidence of any systemic discriminatory practices within the Farm Service Agency. Minority applications were approved at a rate that was slightly less than the rate for nonminorities, but with only a few isolated exceptions, the processing time for both minorities and nonminorities was about the same. We concluded that better outreach efforts and greater technical assistance to minorities during loan-making and loan-servicing may improve the slight disproportionality minorities suffered in program participation. We also recommended that the Farm Service Agency seek minority advisors who had their communities' support and work to increase the number of minority employees in county offices where minority groups were underrepresented.

One legislative change we recommended the Secretary seek was authority to "pool" direct operating loan funds targeted for socially disadvantaged applicants (SDA). The Farm Service Agency's management of its funds during redistribution was allowing SDA funds to expire. By pooling SDA and non-SDA funds, more minority applicants could receive funding before the expiration deadline. A proposal was forwarded to Congress in October 1997 for its consideration, but Congress did not pass it, and SDA direct operating loan funds still expire without pooling.

For our Phase IV review, completed in March 1998, we revisited the 44 recommendations we had made in the first three phases of our review to determine how effectively the Office of Civil Rights and the Farm Service Agency were implementing corrective actions. We found that the Farm Service Agency had adopted several new procedures to

improve relations with the minority farm community and that the Office of Civil Rights had developed a more reliable data base, hired additional staff, and informed all complainants of the status of their cases. However, many inefficiencies remained within the complaints resolution process. The original backlog of cases had grown to 1,088, and the Office of Civil Rights still had no adequate plan to reduce the backlog. Moreover, the Office did not have a system to reconcile its open complaints with those of other agencies. Lists of complaints compiled by the Farm Service Agency and Rural Development showed 30 and 60 percent variations, respectively, from the list compiled by the Office of Civil Rights. Consequently, one entire year after our discovery of the original backlog, the Department still did not have an accurate count of the number of open discrimination complaints on file.

As an adjunct to our phase 2 report, we issued a confidential memorandum that provided information about situations we found in which employee conduct involving loan-making, loan-servicing, and foreclosure proceedings may have adversely affected minorities. For example, one State office foreclosed on a minority applicant who had an open civil rights complaint on file, even though the Secretary specifically suspended foreclosures in such cases. The memorandum also noted instances of unprofessional remarks or behavior. Altogether, the memorandum included nine recommendations for the Office of Civil Rights to review and take action on, as deemed appropriate. Because the recommendations involved individual employees, the information regarding them was sensitive and confidential. At the time we issued the memorandum, the Office of Civil Rights informed us they would perform a comprehensive review at each of the nine

locations. We did not discover until some time later that the Office had referred all nine cases to the Farm Service Agency for investigation. Upon discovering this, we demanded that the Office recall the cases. The Office recalled the cases before the Farm Service Agency began investigating any of them, but it did not, at the time of our Phase V review, initiate any investigations of these cases itself. It has subsequently reviewed the cases and satisfactorily resolved four of them. We are awaiting further action by the Office on the remaining five cases.

### **The Phase V Review and the Call for Case Management Processing**

Our Phase V review, completed in September 1998, was prompted by the Secretary's insistence that the backlog of civil rights complaints be reduced and that OIG's previous recommendations be implemented. As we were coming to realize, the Office of Civil Rights did not always follow through on its commitment to corrective actions, and the results of our Phase V review made this quite clear. Although the Office indicated after our Phase I review that it was gaining control of its filing system and its data base, it showed no improvement at all by Phase V. The data base remained inaccurate and the casefiles were too slovenly to ensure the availability of critical documents. Indeed, after 20 months, the Office of Civil Rights had made virtually no progress in implementing the corrective actions we thought essential to the viability and integrity of its operations. The Office had not reconciled its casefiles with other agencies, had not reviewed all State foreclosure actions in sensitive cases, did not adequately train its investigators, could not



find lost casefiles, did not adequately plan compliance reviews, and had not published Department regulations on civil rights complaints procedures.

The absence of formal procedures and accurate records once again raised questions about the integrity of the complaints resolution process. Moreover, we found critical quality control steps missing at each stage of the process. Staffmembers with little training and less experience were assigned adjudication duties, where they judged matters with serious legal implications. The Department's Office of the General Counsel, which reviews CR's decisions for legal sufficiency, had had to return over half of those decisions because they were based on incomplete data or faulty analysis. Management controls were so poor that we could not render an opinion on the quality of CR's investigations and adjudications.

By this time, two lawsuits had been brought against the Department of Agriculture by minority farmers charging discrimination in USDA programs. The lawsuits, which became known as the Pigford and Brewington cases, turned into class action lawsuits involving other minority farmers, some of whom had previously filed complaints with the Office of Civil Rights. Because the court prohibited the Office from processing these cases as long as they were under litigation, the Office's inventory of cases that required processing shrank by about a fifth. Nevertheless, the original backlog of complaints, although slowly being resolved, still remained at 616. Furthermore, the bulk of the cases the Office of Civil Rights had resolved by this time did not require complete processing. These cases were closed for administrative or other reasons. Between January 1997 and

August 1998, the number of cases the Office of Civil Rights processed completely and closed with adjudicated decisions totaled only 19.

As disturbing as the inefficiency was at the Office of Civil Rights, equally disturbing was the level of evasiveness we encountered there. We found discrepancies between what we were told by staffmembers regarding the number of open and closed complaints and what we were subsequently able to verify. We found similar discrepancies in information the Office communicated to the Secretary and repeated at congressional hearings and other public forums.

The recommendations we made as a result of our Phase V review echoed many of the actions we called for in our earlier reviews, but with more precise details and timeframes for achieving the efficiencies we thought necessary and attainable. New recommendations called for hiring more adjudicators, hiring more experienced managers, implementing quality control over the reports of investigation, and providing training to the staff. Most significantly, we recommended moving the complaints resolution process to a case management team approach. At the time of our Phase V review, the Office of Civil Rights operated under a component processing approach, wherein each different staff group would perform a separate action that furthered the case toward resolution. Under case management, a team of employees from the various staff groups would be responsible for taking a case through the entire process, from intake to adjudication and final decision. Data showed that component processing fragmented handling of cases and slowed complaint resolution. Case management offered the appropriate corrective.

Nevertheless, as our Phase VII review showed, the Office of Civil Rights made no changes to its operating environment and adhered to its component processing approach.

### **Settlement Agreements and the Phase VI Review**

Our Phase V review also determined that the Office of Civil Rights did not track settlement agreements after they were executed and did not know how many agreements the Department had entered into. Settlement agreements are reached when a high probability of discrimination has been found. Department policy in these cases is to offer the aggrieved party a settlement, which may provide for both program relief and compensatory damages. Because the Office of Civil Rights was not tracking its settlement agreements to verify that the other Department agencies were fulfilling the agreement terms, the Secretary asked us to determine whether all forms of compensatory damages and program relief had been implemented. This became the focus of our Phase VI review.

For our Phase VI review, completed in March 1999, we reviewed both settlement agreements entered into by the Office of Civil Rights as well as conciliation agreements entered into by the Department agencies accused of discrimination. A conciliation agreement is typically used by an agency to resolve a complaint soon after it is lodged, not when a high probability of discrimination has been found. Consequently, conciliation agreements offer program relief but not compensatory damages. We found that although the Office of Civil Rights could not account for the 101 settlement and conciliation

agreements we identified within the Department, the terms of those agreements had generally been implemented and all compensatory damages had been paid. Agreement terms that had not been fulfilled involved program relief only, a condition that occurred because of the scope of the relief (i.e., priority consideration on future loans, etc.) In some cases, these terms would not be fully implemented until after the year 2002. We found no evidence that Department agencies intentionally delayed implementing the agreements.

Because the Office of Civil Rights was unaware of the conciliation agreements reached at the agency level, we recommended that it implement procedures to apprise itself of these agreements as well as to track all settlement agreements to ensure they are completely implemented. We also recommended that the Office of Civil Rights seek greater involvement by the Office of the General Counsel in drafting and negotiating settlements. We found some agreements that inappropriately contained monetary damages that were not authorized by law and some that waived provisions of a statute when such a waiver had no legal effect. We concluded that Department civil rights attorneys should assist the Office of Civil Rights in performing economic analyses to support the agreement amounts and in ensuring all components of an agreement conform to laws and regulations. Finally, we recommended that the Office include a section in its regulations detailing how to proceed with disciplinary action in cases where employees have acted in an improper (discriminatory) manner. Although the Department's 17 settlement agreements resulted from findings of proven or probable discrimination, we found that no disciplinary actions had been taken in any of these 17 cases.

It was at about this time that the current director of USDA's Office of Civil Rights was appointed to that position by the Secretary. She was the fourth manager to take charge of the Department's civil rights affairs since we had begun our reviews of those affairs at the end of 1996.

**The Phase VII Review**  
**and the Resolution of Complaints of Discrimination in Employment**

Congressional interest in equal employment opportunity (EEO) complaints led the Secretary to request our review of the Department's ability to track these complaints. Because this involved another look at the operations of the Office of Civil Rights, the Secretary simultaneously asked us to determine what progress the Office had made in implementing our previous recommendations. These two objectives formed the basis of our Phase VII review, completed in March of this year.

As mentioned at the beginning of this testimony, our Phase VII review found that the kind of inefficiencies we had been trying to correct in the program complaints processing system were equally evident in the EEO complaints processing system. Reacting to questions about the status of EEO complaints, the Secretary asked us specifically to verify the numbers that the Office of Civil Rights had provided him. We determined that these numbers were inaccurate and did not reflect the actual status of the 1,731 EEO complaints we could find in the system at that time. Moreover, we found that the

Office's representation of its progress to the Secretary did not reflect its actual performance and that it has been unable to meet the 270-day timeframe set by the Equal Employment Opportunity Commission to resolve EEO complaints. As had been so often the case in the program complaints system, the EEO data base was inaccurate and underutilized, and the casefiles were poorly maintained. We attributed these inefficiencies to the Office's constant reorganization and its practice of concentrating resources on the crisis of the moment rather than adhering to a long-term plan to which managers and employees could be held accountable.

We believe accountability has been one of the mainsprings of the Office's problems from the beginning. We reported it in our first phase report of February 1997, and observed it at work in our last phase review of the EEO complaints processing system. Under the Office's practice of relying on short-term solutions rather than long-term plans, employees are tasked to resolve the current backlog, wherever it may occur, and are not accountable for the backlog that develops within their own area of responsibility. Because of this practice, no fewer than 750 EEO complaints pending acceptance were backlogged at the beginning of this year. No key people in critical areas were held accountable to coordinate the complaint process and ensure that each complaint was handled with due care.

Part of the inefficiency in the Office of Civil Rights is reflected in the quality of its reports of investigation and its final agency decisions regarding EEO complaints. Many of the reports of investigation the Office accepted from its contract investigators

contained substantial errors. For its part, the Office of Civil Rights rendered decisions that were based on inaccurate assumptions or faulty reasoning and did not always reflect the evidence compiled in reports of investigation. In our opinion, these decisions do not show that the Office exercised due care in judging the actions of USDA managers in matters affecting the complainant's careers.

We recommended that the Office of Civil Rights account for all its EEO casefiles and documents, expedite implementation of a new data base, and especially reconcile its cases with those of other Department agencies and with the Equal Employment Opportunity Commission. We found that the Office of Civil Rights did not always update its data base when a complaint had been resolved at the agency level or when a complainant appealed a case to the Commission. For future presentations of statistics to the Secretary, we recommended the Office fully disclose its methodology and the meaning of its data. Overall, we recommended the Office of Civil Rights develop a long-term plan to address issues of leadership, organization, and process reengineering. Finally, we recommended that the Office develop controls to ensure that its reports of investigation and final decisions provide accurate information.

### **The Phase VII Review and the Program Complaints Process**

Our revisit of the program complaints resolution process during our Phase VII review exposed many of the same deficiencies we had encountered in previous phases. Although the Office of Civil Rights had significantly reduced the original backlog of

program complaints to 35, it had by then left 646 program complaints stalled in the earliest stage of processing, and created another backlog of 454 complaints that had exceeded or were going to exceed the 180-day processing deadline. Furthermore, the Office's method of clearing its backlog raised a concern about the nature of its settlement agreements. Of the backlogged cases, 34 had been settled through agreements that had awarded the complainants compensatory damages and relief from USDA debt. In many cases, the Office significantly increased the damages and debt relief beyond the amounts recommended by a USDA task force. The Department of Justice has elsewhere opined that because damage awards are paid from appropriations and are subject to appropriations law, these awards should only be made if it is determined that a court would have made a similar award. Such a determination presupposes an assessment of the degree to which USDA was liable in the case, but we found that none of the settlement offers were fully supported by documentation that reasoned USDA's degree of liability. These claimants received \$2.31 million in compensatory damages and \$3.66 million in debt relief.

For future settlement cases, we recommended that the Office of Civil Rights document the computations behind its awards of compensatory damages, programmatic relief, and attorney's fees in accordance with the legal opinion set forth by the Department of Justice.

As our Phase VII review also confirmed, many critical issues disclosed during the previous six phases remained unresolved. Of the 54 recommendations we had directed to



the Office of Civil Rights, only 13 had been fully implemented. Of significant concern to us was the state of the complaints resolution process. As noted previously in this testimony, we had recommended a major transformation of this process to a case management system, which the data showed would be more efficient than the Office's system of component processing with its fragmented order of individual fiefdoms within the Office staff. However, although the Office's officials had previously agreed that the system they used to process complaints was neither effective nor efficient, no significant changes in how complaints were processed had been made. At the close of our work in Phase VII, we had to report that it was difficult to recognize any significant level of progress within the Office of Civil Rights and that we could not offer any assurances that all program complaints were processed with due care.

Our overall recommendation for processing program complaints echoed our recommendation for processing EEO complaints. We urged the Office of Civil Rights to implement a management plan that addressed effective leadership, a changing organizational culture, customer focus, and process reengineering. Originally, we were told that a reengineered process would be addressed in the agency's future manuals, but the draft manuals we reviewed did not incorporate a case management approach to distributing the workload. More recently, we have been told that the Acting Deputy Director of the Office of Civil Rights is currently developing a comprehensive management plan. We have not seen this plan and do not know to what extent it will include a case management approach.

Today, the Office of Civil Rights has yet to complete final action on 69 of the 94 recommendations we directed to it during our 3½ years of reviews. Several of these recommendations are noteworthy because they date back to the first review we performed 3½ years ago. At that time, we had recommended that the Office's predecessor distribute a weekly report that showed the age of each complaint within the resolution process. The Department could use this report as a tool to take control of growing backlogs. Although the Office is currently devising such a report, it has not instituted it and has not shown how it will use it to identify critical situations. We had also recommended that the Department develop a plan to evaluate civil rights compliance by its 33 agencies. In this case, the Office developed a partial plan but did not perform any evaluations because of budgetary constraints.

At least 29 other recommendations have a similar story. The Office of Civil Rights provided us with a plan and a deadline for completing corrective action, but either the deadline was moved back because of some exigency or the action itself became part of another plan with another uncertain deadline.

By the Office's estimation, the original backlog of program cases has been reduced to 2. One of these is still under investigation, with a completion date estimated to be the end of October, and the other remains open because the complainant has declined a settlement offer. The Office further estimates that the cases stalled in intake in March have been reduced from 646 to 145. However, we received no information about how the Office resolved the 501 cases it no longer reports as being in intake. We do not know how

many of these cases were moved forward in the process and how many may have been open beyond the established timeframe. Consequently, we cannot now address the size of any new backlog of complaints within the Department.

Throughout our seven phases of review, the Office of Civil Rights has been a portrait of a dysfunctional agency. Its staff has remained demoralized throughout three major reorganizations. Management's attempts to improve the working environment have been perfunctory, and its attitude toward accountability has been unenthusiastic. The casefiles were in no better condition in March 2000 than they had been in February 1997, and the data base was, after 3½ years of unreliability, still an inefficient means of tracking the status of complaints. Delays in processing and inconsistencies in handling complaints have further marred the integrity of the system. Unless the Office of Civil Rights implements a management plan that addresses effective leadership, a changing organizational culture, customer focus, and process reengineering, we question whether future complaints of discrimination in employment and in the distribution of program benefits will receive due care.

Mr. Chairman, thank you for the opportunity to present the issues we have identified regarding the Department's processing of complaints of discrimination in employment and in the distribution of program benefits. This concludes my prepared statement, Mr. Chairman. I will be happy to answer any questions you may have.